

In the Court of Appeals of the State of Alaska

Ismael T. Balallo,

Appellant,

v.

State of Alaska,

Appellee.

Court of Appeals No. **A-13393**

Order

Request for Review of Clerk's Intention
to Enter Judgment for Costs of
Appointed Attorney

Date of Order: **September 23, 2021**

Trial Court Case No. **3UN-12-00051CR**

The Appellant, Ismael Balallo, filed a felony merit and sentence appeal. In *Balallo v. State*, 2017 WL 3971822 (September 6, 2017), this Court affirmed his conviction, but remanded his sentence to the three-judge sentencing panel to reconsider Balallo's request for expanded parole eligibility. In that decision, this Court did not resolve Balallo's additional sentencing claim — that the three-judge panel erred in rejecting his argument that it was manifestly unjust to impose a sentence within the presumptive sentencing range — because the Court anticipated that the three-judge panel would address that claim.

After this Court issued its decision remanding the case, the Office of the Clerk of the Appellate Courts notified Balallo that the Clerk intended under Appellate Rule 209(b) to enter a \$2000.00 judgment against him for cost of appellate counsel in a combined merit and sentence appeal. *See* Alaska Appellate Rule 209(b)(6). Balallo did not object to this notice, and on December 6, 2018, a \$2000.00 judgment for the cost of appellate counsel was entered against Balallo.

Once this case was remanded, the three-judge panel denied Balallo's request for expanded parole eligibility, and also ruled that Balallo had not established his claim regarding manifest injustice. Balallo then appealed that decision, and in *Balallo*

v. State, Alaska App. Summary Disposition No. 208 (August 11, 2021), this Court affirmed the three-judge panel's decision.

Alaska Appellate Rule 209(b)(5) directs the Clerk of the Appellate Courts, at the conclusion of any appellate case in which a criminal defendant is represented by court-appointed counsel, to "enter judgment against the defendant for the cost of appointed appellate counsel unless the defendant's conviction was reversed by the appellate court." Because Balallo was represented by court-appointed counsel in this appeal, because this appeal was a felony sentence appeal, and because Balallo's conviction was not reversed, the Appellate Court Clerk's Office notified Balallo on September 14, 2021 that it intends to enter judgment against him in the amount of \$500.00 for the cost of counsel. *See* Alaska Appellate Rule 209(b)(6).

Balallo objects to the Clerk's notice. Because Balallo objects to the Clerk's intent to enter judgment against him, he is entitled to judicial reconsideration of the Clerk's decision. *See* Alaska Appellate Rule 503(h)(2)(A).


Appellate Rule 209(b)(5) requires criminal defendants whose convictions are not reversed on appeal to reimburse to the government a portion of the cost of the attorneys who represent them at public expense. That said, however, in this case, the \$2000.00 judgment entered against Balallo on December 6, 2018 satisfies Appellate Rule 209(b). That judgment included the cost of appellate counsel for Balallo's sentence appeal which was the part of his appeal that this Court did not resolve but instead remanded to the three-judge sentencing panel to reconsider. The sentencing issues recently resolved in Summary Disposition No. 208 were the same sentencing issues Balallo raised in his first appeal.

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Because a judgment has already been entered against Balallo for the cost of the attorney who represented him at public expense regarding the current sentence appeal, the Court concludes that the additional judgment for \$500.00 shall not be entered.

Entered at the direction of Chief Judge Allard.

Clerk of the Appellate Courts



Ryan Montgomery-Sythe,
Chief Deputy Clerk

cc: Ismael Balallo at Goose Creek Correctional Center

Distribution:

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Friedman, Elizabeth D., OPA - Contract
Simel, Nancy R